

REMARKS

In the Office Action dated December 8, 2006, claims 1-11 were examined with the result that all claims were rejected. The rejection was non-final. In response, Applicant has canceled claim 4, amended claims 1-3, 5-8 and 10-11, and added new claims 67-70. In view of the above amendments and following remarks, reconsideration of this application is requested.

In the Office Action, claims 2-11 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner indicated that the independent claim refers to first and second base layers, as well as first and second cling film layers, but the dependent claims only refer to a single base layer and/or cling film layer. Therefore, the Examiner indicated that these claims were indefinite, as it was unclear as to which layer, i.e. the first or second base layer and/or cling film layer, was being referred to in the dependent claims.

In response, Applicant has amended claim 2 to refer to "said first and second base layer are each independently selected from the group consisting of..." Claim 2 thus now refers to both the first and second base layers. With respect to claim 3, it has been amended herein to state that "at least one of said first or second base layer" is a nonwoven. Applicant thus believes claim 3 is also now definite. Finally, claim 10 has been amended to refer to "at least one of said first or second base layer" being breathable, and claim 11 has been amended to refer to "at least one of said first or second cling film layer" being breathable. Applicant thus believes claims 10 and 11 are also now definite.

In the Office Action, the Examiner also objected to claim 2, indicating that the phrase "such as" renders the claim indefinite. Accordingly, Applicant has amended claim 2 to delete all references to "such as" to clarify the claim. In addition, all of the polymers listed after the phrase "such as" found in original claim 2 have now been rewritten in dependent claims 67-70. As a result, Applicant believes claims 2-11 are now definite.

In the Office Action, the Examiner rejected claims 1, 2 and 4-9 under 35 U.S.C. § 102(b) as anticipated by, or in the alternative under 35 U.S.C. § 103(a) as obvious over, Mann et al U.S. 5,085,655. In response, Applicant has amended claim 1 to include the limitations of original claim 4 therein. This obviously necessitated the cancellation of original claim 4. As the Examiner can see, claim 1 now calls for the first and second cling film layers to include a polymer coating each of which is independently comprised of a thermoplastic polymer selected from the group consisting of a polyolefin, an acrylic modified polyolefin, a vinyl acetate modified polyolefin and an acrylic polymer. The cancellation of original claim 4 also necessitated the revision of claim 5-8 to change their dependencies from original claim 4 to claim 1 as amended.

Claim 1, as now amended, is clearly distinguishable over Mann et al. First, there is a difference in chemistry, i.e. Mann et al teaches and describes different polymers than that claimed by Applicant. The thermoplastic elastomers of Mann et al are described at column 3, lines 55-68 as well as at column 5, lines 25-68. Mann et al utilizes copolymers having the structure A-B-A where A represents a block which is non-rubbery and B represents a block which is rubbery or elastomeric. As described at column 5 in Mann et al, the preferred non-rubbery polymer is polystyrene and/or substituted polystyrenes. The preferred elastomer or rubbery polymer are materials such as polyisoprene, polybutadiene and styrene butadiene rubbers. The preferred styrenic block copolymers are SBS, SEBS, SIS and SEPS. Examples of such copolymers are Kraton and Vistalon.

In contrast, Applicant is utilizing a polyolefin, an acrylic modified polyolefin, a vinyl acetate modified polyolefin or an acrylic polymer. None of these thermoplastic elastomers are of the type A-B-A where A is non-rubbery and B is rubbery.

Claim 1 as herein amended is also distinguishable over Mann et al because it calls for the cling-to-cling interface to provide a peel strength of 1,000 grams per inch or less. Applicant refers the Examiner to example 2, located at pages 19 and 20 of the present patent application wherein Applicant compared the peel strength of laminates made with Applicant's adhesives to those prepared with adhesives disclosed in Mann et al, such as

SEBS and EPR. The Examiner can readily see that the peel strengths of Applicant's cling to cling interface are substantially below those reported for SEBS and EPR and taught in Mann et al. For example, at the 13 day aging column in Table 2a the peel strength of Applicant's laminate ranges from 13 to 20 grams. In contrast, at the 13 day aging column in Table 2b, the peel strength of SEBS and EPR as reported by Mann et al ranges from 2,272 to 3,179 grams. This is a significant difference over what is claimed by Applicant.

Thus, the auto-adhesive surface coating of the cling film claimed by Applicant provides an adhesive surface that has low peel strength, but high shear strength (greater than 4 hours). The low peel strength is below 1,000 grams per inch. In contrast, Mann et al discloses high peel strength and involves different chemistries of the cling surface.

In the Office Action, claims 3, 10 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mann et al '655 as applied to claim 1, and further in view of Tuman et al U.S. Patent Publication 2001/0018110. The Tuman et al reference is being cited by the Examiner to illustrate a breathable, nonwoven base layer. However, in view of the amendments made to claim 1, Applicant has clearly distinguished the present invention over Mann et al '655. Accordingly, a combination of Tuman et al with Mann et al still does not result in Applicant's claimed invention. Therefore, Applicant believes the Examiner should withdraw this obviousness rejection based upon Mann et al and Tuman et al.

In the Office Action, claims 1-11 were provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 48-90 of co-pending application number 10/981,046 in view of Mann et al '655. Also, claims 1-11 were provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-90 of co-pending application number 10/867,438 in view of Mann et al '655. Both of these rejections are provisional obviousness-type double patenting rejections as patents have not yet issued on the co-pending applications. In response, Applicant will file an appropriate terminal disclaimer

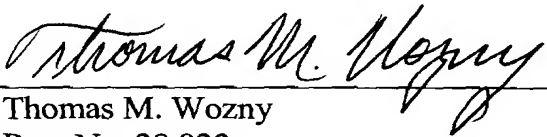
Application No. 10/700,761
Amendment Dated June 8, 2007
Reply to Office Action of December 8, 2006

to overcome both of these obviousness-type double patenting rejections upon the indication of allowable subject matter herein.

An effort has been made to place this application in condition for allowance and such action is earnestly requested.

Respectfully submitted,

ANDRUS, SCEALES, STARKE & SAWALL, LLP

By 
Thomas M. Wozny
Reg. No. 28,922

100 East Wisconsin Avenue, Suite 1100
Milwaukee, Wisconsin 53202
Telephone: (414) 271-7590
Facsimile: (414) 271-5770